

REMARKS

Regarding the Office Action dated July 13, 2004, Applicant has revised the presented claims for consistency with the previously presented claims. Applicant thanks the Examiner for bringing this to his attention.

Regarding the Office Action dated October 6, 2003, Applicant has carefully considered the position of the Examiner and respectfully requests reconsideration based upon the manifest differences between the claimed invention and the cited art. In the Office Action, the Examiner rejected claims 40-54 under 35 U.S.C. §103 as being unpatentable over Wynn et al. U.S. Patent No. 5,459,657 ("Wynn") in view of Beach et al. U.S. Patent No. 5,942,077 ("Beach"). Claims 55-59 have been withdrawn from consideration as being drawn to a non-elected invention. In the following remarks, applicant will respond to those rejections and highlight the differences between the pending claims and the cited references such that it becomes apparent to the Examiner that these rejections should be reconsidered and withdrawn.

Applicant submits that the Examiner's reliance upon the cited art is misplaced as applicant's invention is very different from what is disclosed in these references. In particular, applicant would like to direct the Examiner's attention to applicant's idea for a novel system providing an improved store compensation system and method having automated accuracy recalculating. Applicant is unaware of anything like this, and even the references relied on by Examiner do not suggest the applicant's novel invention.

Briefly, Wynn discloses an employee time entry and accounting system which permits employees to clock in and clock out from work at computerized time clocks. However, Wynn's

1 system does not and cannot recalculate employee compensation at predetermined times, which is
2 important to determine if an employee's pay is consistent and accurate. Furthermore, as the Examiner
3 states, Wynn does not "disclose a point-of-sale system". In stark contrast, the present invention allows
4 for an employee compensation system which records sales transaction data for an employee. Wynn's
5 system would not be suitable for any commission based compensation – it can only be used for
6 calculating the amount of time an employee worked.

7 Next, the Examiner suggests that Beach "discloses a network POS [Point-of-Sale] system
8 where employee compensation plan comprising sales data is analyzed via business rules, e.g. Fig. 5."
9 However, while applicant agrees that Beach teaches a point-of-sale system, that system is directed to
10 monitoring and processing data collected at the point-of-sale of the goods and/or services – that is,
11 information such as inventory controls, hourly sales analysis, or even labor productivity. Figure 5
12 merely shows the process of building the standard database structures and indexes. These databases
13 index data for monitoring goods and services – not for individual employee's compensation. In fact,
14 nowhere does Beach teach or suggest a system which collects information about an individual employee
15 as a means for calculating or recalculating compensation. Thus, even if it were proper to combine the
16 teachings of Wynn and Beach, such a combination would still not teach or suggest applicant's novel
17 invention.

18 In short, none of the references relied on by the Examiner, either alone or in combination, teach
19 or suggest each and every element of the invention as claimed. Specifically, they fail to disclose or
20 render obvious a method for providing a store compensation system which records sales transaction
21 data for employees and recalculates the compensation at predetermined times. Therefore, applicant

1 submits that the rejection of claims 40-54 as being unpatentable over Wynn in view of Beach should be
2 reconsidered and withdrawn.

3 Furthermore, applicant submits that the obviousness argument advanced by the Examiner is
4 merely an "obvious to try" argument. The systems disclosed in Wynn and Beach are inadequate for the
5 determination of employee compensation on an hourly wage scheme as well as from sales commissions.
6 Nothing in either Wynn or Beach provides an incentive for their combination – such a combination
7 would be nonsensical. Indeed, the system disclosed by Wynn is directed to individual employees and
8 the Beach system is directed at monitoring goods and services. It is not clear how or why Wynn and
9 Beach would work together. And, it is certainly not obvious to combine them in the manner suggested.
10 Accordingly, it cannot be said that the present invention is obvious in view of any of Wynn and/or
11 Beach. At best it might be "obvious to try" such a combination, which, of course, is not the standard for
12 obviousness under 35 U.S.C. §103. *Hybritech, Inc. v. Monoclonal Antibodies, Inc.*, 231 U.S.P.Q.
13 81, 91 (Fed. Cir. 1986). The only "motivation" for the Examiner's obviousness argument in view of the
14 cited references is provided by the teachings of applicant's own disclosure. No such motivation is
15 provided by the references themselves.

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